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NO. 95-1377

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

HOSPITAL SAN FRANCISCO,
Petitioner

v.

GLORIA IVETTE CORREA et al.,
Respondents

On Petition for Writ of Certiorari to
the Court of Appeals for the First Circuit

BRIEF FOR THE AMERICAN HOSPITAL ASSOCIATION AND THE ASSOCIATION OF HOSPITALS OF PUERTO RICO AS AMICUS CURIAE IN SUPPORT OF PETITIONER HOSPITAL SAN FRANCISCO

Of Counsel:
Fredric J. Entin
James A. Henderson
Maureen D. Mudron
American Hospital
Association
One North Franklin
Chicago, IL 60606
(312) 422-2777

March 25, 1996

Ricardo F. Casellas
(Counsel of Record) and
RODRIGUEZ & CASELLAS
Counsel for Amicus Curiae
American Hospital
Association and
Association of Hospitals
of Puerto Rico
P.O. Box 195435
San Juan, PR 00919-5435
(787) 754-1146
(787) 754-1181 (fax)

DOUBLEDEY INC. SAN JUAN, P.R. 00917
(787) 764-1511

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of Puerto Rico
P.O. Box 195435
San Juan, PR 00919-5435
(787) 754-1146
(787) 754-1181 (fax)

WRITTEN CONSENT

The American Hospital Association ("AHA") and the Association of Hospitals of Puerto Rico ("AHPR"), file a brief amicus curiae in support of the Petitioner Hospital San Francisco.

The AHA and AHPR have obtained consent of the parties to the filing of this Brief pursuant to Supreme Court Rule 37.2(a). Counsel for Petitioner and Respondent have given their written consent to filing this Brief. Letters that evidence such consent support this Brief.

QUESTION PRESENTED

The first issue raised by the Petition and upon which the AHA and AHPR submit this Brief Amicus Curiae is:

> Whether the Court of Appeals for the First Circuit erred in its interpretation of federal law when it misconstrued the plain and unambiguous meaning of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 12 U.S.C. §1395dd, and overlooked clear legislative history of the statute, which provides standing to assert a damages claim for an EMTALA violation solely to the aggrieved individual patient.

TABLE OF CONTENTS

		Page
I.	WRITTEN CONSENT	ii
II.	QUESTION PRESENTED	iii
III.	TABLE OF AUTHORITIES	vi
IV.	INTEREST OF AMICUS CURIAE	1
V.	SUMMARY OF ARGUMENT	5
VI.	ARGUMENT IN SUPPORT OF GRANTING THE WRIT	6

A. By failing to consider the plain meaning, structure, and legislative history of EMTALA, the Court of Appeals for the First Circuit disregarded clear legislative intent to provide standing only to the aggrieved individual patient for an EMTALA violation. The end-result was that the Court of Appeals engrafted a remedy on a federal statute which Congress never intended. 5

1. Preliminary Statement 7
2. Plain Language of EMTALA 7
3. Legislative History of EMTALA 12

VI.	CONCLUSION	16

TABLE OF AUTHORITIES

Cases	Page
Bryant v. Riddle Memorial Hosp., 689 F. Supp. 490(E.D. Pa. 1988)	7
Consumer Product Safety Comm'n v. GTE Sylvania, 447 U.S. 102 (1979)	13
Deal v. United States, 508 U.S. 129, 113 S. Ct. 1993 (1993)	11
Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982)	16
Griffith v. Mt. Carmel Med. Center., 842 F. Supp. 1359 (D. Kan. 1994)	10
John Hancock Mut. Life Ins. Co. v. Harris Trust and Sav. Bank, 510 U.S.___, 114 S. Ct. 517 (1993)	11
Lane v. Calhoun-Liberty County Hosp. Ass'n, Inc., 846 F. Supp. 1543 (N.D. Fla. 1994)	10
United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365 (1988)	12

Statutes

42 U.S.C. §1395dd(d)(2)(A) 7

42 U.S.C. §1395 dd(b)(2) 8

42 U.S.C. §1395 dd(c)(1) 9

42 U.S.C. §1395dd(a)(b) 8

42 U.S.C. §1395dd(d) 3

42 U.S.C. §1395dd(e) 9

Rules

Fed. R. Civ. P. 50(a) 1

Fed. R. Civ. P. 50(b) 2

Legislative History

131 Cong. Rec. §13905 (daily ed. Oct. 23, 1985) 14

H.R. Rep. No. 241 (I), 99th Cong. 1st Sess. 28, reprinted in 1986 U.S. Code Cong. & Admin. News 606 14

H.R. Rep. No. 241 (III), 99th Cong. 1st Sess. 67, reprinted in 1986 U.S. Code Cong. & Admin. News 728, 734, 746, 749, 750, 751 15

INTEREST OF THE AMICUS CURIAE

The nature of the action, pleadings, and other facts are set forth in the Petition for certiorari and accordingly, we shall not undertake more than a brief outline.

A federal jury awarded $500,000 in damages for the pain, suffering, and mental anguish experienced by the relatives of the deceased-patient for violations of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. §1395dd (1988 & Supp. 1993).

Petitioner Hospital San Francisco first raised the issue whether EMTALA allows a right of action to relatives for their own harm in a Fed. R. Civ. P. 50(b) post-judgment motion at the U.S. District Court for the District of Puerto Rico. The District Court entertained and decided the legal issue on the merits. It held that EMTALA does provide standing for relatives to assert a damages claim, denied post-judgment relief to vacate the verdict, and entered judgment.

The U.S. Court of Appeals for the First Circuit upheld the judgment by procedural default. The Court of Appeals reasoned that Hospital San Francisco had waived appellate review by failing to raise the standing

issue in a Fed. R. Civ. P. 50(a) motion at the District Court. By finding waiver, the appellate court applied the stringent plain error analysis to excuse or circumvent de novo review on the merits of an important and novel question of federal law. By invoking plain error, the Court of Appeals disregarded settled rules of federal statutory construction when it conducted an incomplete and erroneous analysis of EMTALA and overlooked its legislative history.

The decision of the Court of Appeals perpetuates a legal error by the District Court and upholds a jury verdict which assumes parties have a federal statutory right to sue, which they do not.

The American Hospital Association, founded in 1898, is a not-for-profit association of health care provider organizations which includes 5,000 hospitals, health care systems, networks and other providers of care. Its mission is to advance the health of individuals and communities. It leads, represents, and serves health care provider organizations that are accountable to the community and committed to health improvement. To fulfill its mission, AHA regularly participates in the legislative and judicial arenas to address important issues concerning the delivery of

health services and the regulation of health care provider organizations.

The Association of Hospitals of Puerto Rico ("AHPR"), a non-profit organization established more than fifty years ago, represents the interests of approximately 65 public and private hospitals in Puerto Rico.

Virtually all AHA and AHPR acute care hospitals provide emergency room services and are participants in the federal Medicare program. As participants in Medicare, they are subject to EMTALA[1].

AHA and AHPR are committed to assuring that individuals who need emergency services have access to emergency medical care through hospital emergency departments. An emergency department's refusal to provide emergency treatment to a person with an emergency condition is a matter of serious concern and is dealt with severely under EMTALA. A hospital can be fined, lose the right to payment for treating Medicare beneficiaries, and be sued in a civil damages action. 42 U.S.C. §1395dd(d) (1993). It

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[1] Congress enacted EMTALA as part of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA").

has been and continues to be of concern to AHA and AHPR that a statute with such serious implications be administered clearly, fairly, and faithfully to the intent of the Congress.

AHA and AHPR share common interests and concerns for a correct and fair resolution of EMTALA actions. First, courts should adhere to well-established norms of statutory interpretation to resolve pure issues of federal law on the merits without the pain and prejudice of procedural default. Second, AHA and AHPR are concerned that the Court of Appeals' overbroad interpretation of EMTALA creates a remedy for those without a substantive right. By federalizing a new damages claim for individuals not within the zone of interests protected by EMTALA, the Court of Appeals has impermissibly expanded the limited subject matter jurisdiction of federal courts in EMTALA actions, and improperly relied upon local law to answer the federal question of the proper parties with standing to sue.

Finally, AHA and AHPR member hospitals are now exposed to liability for claims clearly rejected by the Congress in enacting EMTALA. The economic impact of what amounts to legislation by judicial fiat

is foreseeable. Conferring standing to sue for relatives of an aggrieved individual patient to recover for their own independent "harm" for an EMTALA violation, will bring an onslaught of new claimants to the forefront of EMTALA litigation. Litigation will not only increase health care costs and insurance premiums, but may also place an additional strain on already-stressed facilities serving rural and indigent populations, and cause disputes about the scope of insurance coverage to hospitals for EMTALA violations.

SUMMARY OF ARGUMENT

This Court should grant the Petition and determine that only an aggrieved individual patient has standing to sue a hospital for an EMTALA violation. EMTALA provides that only an individual patient has a civil damages remedy for an EMTALA violation. The legislative history of EMTALA expressly confirms that only the individual patient, not any other person, may assert such a claim. Accordingly, this Court should reverse the holding below that relatives of an individual patient may sue for an EMTALA violation.

Only this Court can authoritatively resolve the proper scope of this federal statute. The Court of

Appeals' overbroad interpretation directly conflicts with the intent of the Congress. If left unresolved, this conflict will prolong the uncertainty and confusion faced by Medicare hospitals that now face broader liability in private damage actions under EMTALA. Neither a plain reading of the statute nor its legislative history supports the conclusion of the Court of Appeals.

ARGUMENT IN SUPPORT OF GRANTING THE WRIT

I. By failing to consider the plain meaning, structure, and legislative history of EMTALA, the Court of Appeals for the First Circuit disregarded clear legislative intent to provide standing only to the aggrieved individual patient for an EMTALA violation. The end-result was that the Court of Appeals engrafted a remedy on a federal statute which Congress never intended.

A. Preliminary Statement

The Congress enacted EMTALA to combat the growing problem of "patient dumping", which meant that hospitals would refuse treatment to indigent patients with emergency medical conditions. Bryant v. Riddle Memorial Hospital, 689 F. Supp. 490, 491 (E.D. Pa. 1988). EMTALA is an important federal statute, intended to assure that any individual who

needs emergency services has access to emergency medical treatment at hospital emergency departments. The Court of Appeals' decision creates rights under EMTALA for the next of kin of patients who establish an EMTALA violation. The interpretation of EMTALA at issue here raises solely a question of pure federal law. The potential impact of the First Circuit's decision makes it imperative that this Court intervene now and construe EMTALA's scope and application.

B. **Plain Language of EMTALA**

Section 1392dd(d)(2)(A) of EMTALA provides, in relevant part:

> "Civil Enforcement
>
> (A) Personal harm
>
> Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the state in which the hospital is located, and such equitable relief as is appropriate." (emphasis ours)

The crucial legal issue on the merits of the Petition is whether the word "individual" alone or in conjunction with the phrase " who suffers personal

harm as a direct result . . .", means that only the aggrieved patient can recover, or broadly extends to relatives of the patient.

The structure and context of EMTALA plainly suggest that the word "individual" means the individual patient aggrieved by an EMTALA violation. A hospital must provide "medical screening" to "any individual . . . that comes to the emergency department . . ." §1395dd(a). A hospital must provide "stabilizing treatment" to any such individual who is determined to have an "emergency medical condition". §1395dd(b). Section 1395dd(b)(2) distinguishes between the "individual" and a "person" acting on the individual's behalf to determine, for example, informed consent. §1395dd(b)(2). "If an individual at a hospital has an emergency medical condition which has not been stabilized . . .", the hospital, subject to exceptions, may not transfer the individual. §1395dd(c)(1). While the statute, §1395dd(e), does not define "individual", it defines an "emergency medical condition" to include "placing the health of the individual [or pregnant woman] in serious jeopardy."

Certain conclusions are inescapable from the structure of EMTALA. A hospital owes no duty to screen those persons that do not physically come to the emergency department. A hospital owes no duty to stabilize an individual that does come, but is not determined to have an emergency medical condition. Individuals and persons are not statutory equivalents. A person that does not come to an emergency medical department is not an individual subject to screening by the hospital. A person that does come, but is not determined to have an emergency medical condition, is not an individual subject to being stabilized by the hospital. This reading naturally excludes from statutory coverage relatives of the individual patient. Had Congress intended to grant standing to sue for relatives of the individual patient, it could have done so by granting relief to such persons. The Congress expressly refused to do so.

Without either construing the context, purpose, and structure of the statute as a whole to make common sense or reviewing legislative history, the Court of Appeals determined that the word "individual" could not be read to exclude relatives of

the patient[2]. The superficial and isolated reading by the Court of Appeals of the word "individual" in EMTALA violates settled federal norms of statutory construction. See John Hancock Mut. Life Ins. Co. v. Harris Trust and Sav. Bank, 510 U.S. ___, 114 S. Ct. 517, 523 (1993) (this Court's examination of statutory language is "guided not by a single sentence or member of a sentence, but look[s] to the provisions

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[2] For its interpretation of EMTALA that "individual" "would naturally extend the statutory prerogative to [relatives] who are eligible to bring survivors' actions under local law", the Court of Appeals relied on two cases: Lane v. Calhoun-Liberty County Hosp. Ass'n, Inc., 846 F. Supp 1543 (N.D. Fla. 1994), and Griffith v. Mount Carmel Med. Ctr., 842 F. Supp. 1359 (D. Kan. 1994). Neither case is on point. In Griffith, while a jury awarded damages to relatives of the aggrieved patient under EMTALA, the defendant hospital did not raise the issue. The District Court assumed, without deciding, that Kansas law granted a tort remedy to the relatives. Lane is also unpersuasive. While the hospital there argued that Florida law does not allow the relatives to recover for their own emotional distress, and the court ultimately disagreed, there was no argument or decision on the narrow federal statutory construction issue raised here on the meaning of "individual". Further, the First Circuit's reliance on state law is misplaced for who is an "individual" with standing remains a federal question under Section 1392dd(d)(2)(A). The plain language of EMTALA supports the conclusion that state law determines only the availability of damages for personal injury to those that, by federal law, have standing to sue.

of the whole of the law, and to its object and policy"); Deal v. United States, 508 U.S. 129, 113 S. Ct. 1993, 1996 (1993) (recognizing "fundamental principle of statutory construction (and, indeed of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used").

Induced by waiver and plain error, the Court of Appeals gave a superficial reading to statutory language without true de novo review for pure questions of law. The Court of Appeals thus found "two equally" open constructions of the word "individual" (Opinion at 24). The Court of Appeals suggested ambiguity when there was none in EMTALA. To be sure, the word "individual" has many meanings. But susceptibility to different meanings in the abstract, does not render the word "individual" ambiguous when, as here, all but one of the meanings is foreclosed by the context of the statute.

Construed as a whole, the statutory structure of EMTALA compels the conclusion that the word individual refers only to the individual patient. This result is compatible with the rest of the law which serves to protect, not everyone, but solely patients

who need emergency medical assistance. See United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme-because the same terminology is used elsewhere in a context that makes its meaning clear or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law") (citations omitted).

C. **Legislative History of EMTALA**

The literal reading by the Court of Appeals of the word "individual" in EMTALA produced conflicting interpretations. Assuming that the Court of Appeals correctly perceived two "equally open", yet conflicting or ambiquous constructions of the word "individual", it was duty-bound to ascertain legislative intent. See Consumer Product Safety Comm'n v. GTE Sylvania, 447 U.S. 102, 108 (1979) ("Absent a clearly expressed legislative intent to the contrary, [statutory] language must ordinarily be regarded as conclusive"); cf. Bryant, 689 F. Supp. at 491 (where the statutory interpretation issue was ambiguous and novel, district court examined legislative history of EMTALA to

support the conclusion that Congress intended to vest federal courts with subject matter jurisdiction).

Because the Court of Appeals' literal reading of EMTALA produced conflicting interpretations, it should have consulted legislative history to determine conclusively and correctly whether its interpretation was consistent with legislative intent. The Court of Appeals failed to consult legislative history. Had it done so, the legislative history of EMTALA would have confirmed unequivocally that relatives of the aggrieved patient were not in the class of individuals for whose special benefit the legislation was enacted. On the contrary, the Congress expressly intended to limit standing only to the aggrieved individual patient.

The intended beneficiaries of EMTALA were patients with seriously ill conditions or women in labor. Senator Proxmire voiced that this legislation "deals with one of the most egregious abuses: the refusal of hospitals with emergency rooms to provide emergency treatment for critically ill patients or women in labor." 131 Cong. Rec. §13905 (daily ed. Oct. 23, 1985).

The Committee on Ways and Means initially drafted Bill H.R. 3128 which provided a civil damages

remedy to "any person or entity adversely and directly affected by a participating hospital's violation . . ."[3]. H.R. Rep. No. 241 (I), 99th Cong. 1st Sess. 28, reprinted in 1986 U.S. Code Cong. & Ad. News 606.

The Judiciary Committee, which exercises oversight of federal causes of action, Bryant, 689 F. Supp. at 493 n. 2, found that the civil enforcement provisions of Bill HR 3128 were vague and overbroad with respect to the parties which could bring a civil action. Id. at 493. The Judiciary Committee amended the civil enforcement provisions by eliminating the language that "any person or entity" could bring a civil action. In clear and narrow terms, the Judiciary Committee,

> ". . . was concerned that the terms of §124 which establish a new federal cause of action were somewhat vague. The language, as reported by the Ways and Means Committee, did not precisely identify which parties could bring actions under the provision, nor did it identify

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[3] During Congressional debate, interested parties voiced general concerns that H.R. 3128 was vague , overbroad, and would lead to a reduction in the availability and quality of emergency medical care. H.R. Rep. 241(111), 99th Cong. 1st. Sess. 6-7, reprinted in U.S. Code Cong. & Admin. News 734, 746, 749, 750, 751.

> those against whom they could bring such actions. The vagueness of the provision would not only leave the rights and liabilities of parties unclear, it also would place an unnecessary burden on the courts to define these rights and liabilities.
>
> Therefore, the Committee amendment makes it clear that the section authorizes only two types of actions for damages. The first of these could be brought by the individual patient who suffers harm as a direct result of a hospital's failure to appropriately screen, stabilize, or properly transfer that patient. The second type of action could be brought by a medical facility which received an improperly transferred emergency patient (within the meaning of §124) or a woman in active labor. Damages may be brought only against the hospital which has violated the requirements of §124." (emphasis ours)
>
> HR Rep. No. 241 (III), 99th Cong. 1st Sess. 6-7, reprinted in 1986 U.S. Code Cong. & Admin. News 728.

As amended by the Judiciary Committee, the House version of the Bill ultimately became the Law. Id at 42; see also Bryant, 689 F. Supp. at 492 n. 1, 493.

Congressional intent to limit a private remedy in Section 1392dd(d)(2)(A) solely to the aggrieved individual patient, and excluding any other person, compels the conclusion that EMTALA does not grant standing to the relatives of the deceased in this action. Such manifest legislative intent is controlling. Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1981) (When a literal interpretation of statutory language produces a result that is at odds with the intention of the law, legislative intent controls).

CONCLUSION

AHA and PRHA remain concerned that the Court of Appeals would, and should, have given proper consideration to the EMTALA standing issue on the merits but for Hospital San Francisco's purported waiver of an objection at trial.

Raise it or waive it rules serve a laudable purpose in the administration of justice. Timely objections alert the trial judge to remedy legal errors before submission of the case to the jury. This is true for questions of fact and mixed questions of law and fact. In those cases, a timely objection is outcome-determinative for the fact- finder applies the law in the jury instructions to weigh the evidence, decide the

credibility of witnesses, and ultimately, reach a verdict. But Hospital San Francisco's timely objection in a Rule 50(a) motion or in jury instructions would not have made a difference in the fairness of the proceeding below or the ultimate outcome. In the instant case, the trial judge decided a pure question of federal law on the merits which had relevance to considerations of standing. As it was a pure issue of law on entitlement to bring suit, there was no need for the fact-finder to weigh the evidence or determine credibility issues. Regardless of any jury's determination, the relatives lack standing for any violation of EMTALA as a matter of federal law. There was no basis for deference to the jury's verdict. In these circumstances, the appellate court had a duty to decide the important and novel legal issue of EMTALA standing de novo without the constraints of technical waiver. A final judgment for parties that lack standing to assert a federal claim, as much as one that rests on a repealed law, cannot legally stand.

Without complete and correct analysis of the EMTALA issue, the Court of Appeals' decision may be misconstrued and improperly relied upon as precedent in future cases. The First Circuit's erroneous reading

of EMTALA should not remain as precedent sowing seeds of confusion about the proper and limited application of EMTALA. The Congress adopted this law to fill gaps in existing state laws which often failed to assure access to emergency care, not to federalize new damages claims for persons not within the zone of interests protected by EMTALA. EMTALA is an important federal response to a discrete national problem; its clear terms and manifest intent should not be subject to judicial lawmaking.

DATED, this 25 day of March 1996.

RESPECTFULLY SUBMITTED,

Of Counsel:
Fredric J. Entin
James A. Henderson
Maureen D. Mudron
American Hospital Association
One North Franklin
Chicago, IL 60606
(312) 422-2777

Ricardo F. Casellas
(Counsel of Record) and
RODRIGUEZ & CASELLAS
Counsel for Amicus Curiae
American Hospital Association and
Association of Hospitals of Puerto Rico
P.O. Box 195435
San Juan, PR 00919-5435
(787) 754-1146
(787) 754-1181 (fax)

FIDDLER GONZALEZ & RODRIGUEZ
ATTORNEYS AND COUNSELLORS AT LAW
P O BOX 363507
SAN JUAN, P.R. 00936-3507

TELEPHONE (809) 753-3113
FAX (809) 759-3123

THE CHASE MANHATTAN BANK BUILDING
284 MUÑOZ RIVERA AVENUE
9TH FLOOR
HATO REY, P.R. 00918

JAY A. GARCÍA - GREGORY
PARTNER
DIRECT DIAL NO. (809) 759-3139

HAND-DELIVERED

Ricardo Casellas, Esq.
RODRIGUEZ & CASELLAS
Hato Rey Tower Bldg
8th Floor-Suite 805
Hato Rey, Puerto Rico

Re: Hospital San Francisco, v.
Gloria I. Correa González,
Petition for Certiorari
(O/F No. 1615-001)

Dear Mr. Casellas:

This is to inform you that Petitioner, Hospital San Francisco, Inc. consents to your request, on behalf of the American Hospital Association and the Association of Hospitals of Puerto Rico, to submit an amicus curiae brief under Rule 37 of the Supreme Court Rules, in support of the Hospital's position.

Sincerely,

Jay A. García Gregory

/psn

BEST AVAILABLE COPY

RODRIGUEZ & CASELLAS
Attorneys and Counselors at Law
Hato Rey Tower, Suite 805
268 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
(809) 754-1146

Orlando J. Rodríguez
Ricardo F. Casellas

P.O. Box 195435
San Juan, PR 00919-5435
Fax (809) 754-1181

February 22, 1996

By fax 758-5515

David Efrón, Esq.
PO Box 29314
Rio Piedras, Puerto Rico

Re: Petition for Certiorari in Hospital San Francisco v. Correa

Dear Mr. Efrón:

I represent the American Hospital Association and the Association of Hospitals of Puerto Rico.

This serves to confirm our telephone conversation of February 21, 1996 in which you consented to my filing of an amicus curiae brief in this action.

Thank you for your cooperation.

Sincerely,

Ricardo F. Casellas

mcc
c: Jay García-Gregory, Esq.
Igor Domínguez, Esq.
C:\HOSPITAL\EFRON.LTR